

By: Betty Brown

H.B. 3317

A BILL TO BE ENTITLED

AN ACT

1 relating to financial arrangements between referring health
2 care providers and providers of designated health services in
3 rural areas; providing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS

5 SECTION 1. Subtitle A, Title 3, Occupations Code is
6 amended by adding Chapter 111 to read as follows:

7 CHAPTER 111. SELF-REFERRAL BY HEALTH CARE PROVIDERS

8 Sec. 111.001. SHORT TITLE. This chapter may be cited as
9 the "Rural Access to Health Care Act."

10 Sec. 111.002. APPLICATION OF CHAPTER. This chapter
11 applies only to an entity located in a county with a population
12 of 50,000 or less.

13 Sec. 111.003. LEGISLATIVE FINDINGS. (a) It is recognized
14 by the Legislature that the referral of a patient by a health
15 care provider of designated health services in which the
16 referring health care provider has an interest represents a
17 potential conflict of interest.

18 (b) The Legislature finds these referral practices may
19 limit or eliminate access to health care services in rural
20 areas, may result in over-utilization of health care services,

1 may increase costs to the health care system, and may adversely
2 affect the quality of health care.

3 (c) The Legislature also recognizes, however, that it may
4 be necessary under certain market conditions for providers to
5 own entities providing health care services, and to refer
6 patients to such entities, as long as certain safeguards are
7 present in the arrangement.

8 (d) It is the intent of the Legislature to provide
9 guidance to health care providers regarding prohibited patient
10 referrals between health care providers and entities providing
11 health care services in rural communities and to protect the
12 people of rural Texas from unnecessary and costly health care
13 expenditures.

14 Sec. 111.004. DEFINITIONS. For the purpose of this
15 chapter, the word, phrase, or term:

16 (1) "Designated health services" means:

17 (A) ambulatory surgery center services;

18 (B) clinical laboratory services;

19 (C) diagnostic imaging services;

20 (D) dialysis services;

21 (E) durable medical equipment and supplies;

22 (F) endoscopic services;

23 (G) electromyogram and other neurological testing;

24 (H) home health services;

1 (I) inpatient and outpatient hospital services
2 (J) lithotripsy;
3 (K) occupational therapy services;
4 (L) outpatient prescription drugs;
5 (M) parental and enteral nutrients, equipment and
6 supplies;
7 (N) physical rehabilitation and therapy services;
8 (O) prosthetics, orthotics, and prosthetic devices
9 and supplies;
10 (P) radiation oncology and chemotherapy oncology
11 services; and
12 (Q) speech-language pathology services.
13 (2) "Diagnostic imaging services" means general
14 radiography, magnetic resonance imaging, nuclear medicine,
15 angiography, computed tomography, positron emission tomography,
16 and ultrasound to include cardiac echo and obstetrical
17 ultrasound.
18 (3) "Entity" means a sole proprietorship, partnership,
19 corporation, foundation, trust, unincorporated association or
20 other business entity.
21 (4) "Health care provider" means any individual or entity
22 licensed as a health professional or authorized to practice in
23 health care under Title 3, Subtitles B and C of this Code.

1 (5) "Immediate family member" means a health care
2 provider's spouse, child, child's spouse, grandchild,
3 grandchild's spouse, parent, parent-in-law, or sibling.

4 (6) "Investment interest" means an equity or debt security
5 issued by an entity, including, without limitation, shares of
6 stock in a corporation, units or other interests in a
7 partnership, bonds, debentures, notes, or other equity interests
8 or debt instruments; provided, however, that an investment
9 interest in real property resulting in a landlord-tenant
10 relationship between the health care provider and the entity in
11 which the equity interest is held, unless the rent is
12 determined, in whole or in part, by the business volume or
13 profitability of the tenant or exceeds fair market value shall
14 be excepted from this definition.

15 (7) "Investor" means a person or entity owning a legal or
16 beneficial ownership or investment interest, directly or
17 indirectly, including, without limitation, through an immediate
18 family member, trust, or another entity related to the investor
19 within the meaning of 42 C.F.R. Section 413.17, in an entity.

20 (8) "Licensing authority" means the department, board,
21 office or other agency of the state that regulates health care
22 providers that are subject to this chapter.

1 (9) "Patient" means a person who receives a physical
2 examination, evaluation, diagnosis, or treatment by a health
3 care provider.

4 (10) "Payor" means an entity, including a third party
5 payor or other insurance company, a health maintenance
6 organization or another organization that pays a health care
7 provider to provide designated health services.

8 (11) "Referral" means a request by a health care provider
9 for, or ordering of, designated health care services for a
10 patient. The term does not include the performance of a
11 designated health service for a patient by a health care
12 provider or an entity which provides or supplies the designated
13 health service (i) under the direct supervision of the patient's
14 health care provider; (ii) performed in the same building in
15 which the patient's health care provider operates his or her
16 medical practice; and (iii) where the performance or supply of
17 the designated health service results in a total financial cost
18 to the patient or the patient's payor or third party payor of no
19 more than \$250 per year per patient.

20 (12) "Third party payor" means:

21 (A) a company authorized to engage in business
22 involving the payment of money or another thing of value in the
23 event of loss resulting from disability incurred as a result of
24 sickness or ill health, as defined in the Insurance Code;

1 (B) a health insurance plan offered by an employer
2 under the provisions of the Employee Retirement and Insurance
3 Security Act of 1974; or

4 (C) a publicly funded program of health care
5 services, including but not limited to Medicaid or the
6 Children's Health Insurance Program.

7 Sec. 111.005. PROHIBITED REFERRALS AND CLAIMS FOR PAYMENT.

8 (a) A health care provider may not refer a patient for the
9 provision of designated health services to an entity:

10 (1) in which the health care provider or the health
11 care provider's immediate family member is directly or
12 indirectly an investor or has an investment interest; and

13 (2) which is located within a 30-mile radius of a
14 hospital which is:

15 (i) located in a county with a population of
16 50,000 or less; or

17 (ii) designated as a critical access hospital
18 under the authority of and in compliance with 42 U.S.C. Section
19 1395i-4; or

20 (iii) designated as a sole community hospital under the authority of and in compliance with 42 U.S.C. Section
21 1395ww(d)(5)(D)(iii).

22 (b) No claim for payment may be presented by a health
23 care provider or entity to any individual, payor, third party
24 payor or other entity for a service furnished pursuant to a
25 referral prohibited under this section.

1 Sec. 111.006. EXCEPTIONS. The provisions of Section
2 111.005 shall not apply where the health care provider's
3 investment interest is in registered securities purchased on a
4 national exchange and issued by a publicly held corporation:

5 (1) whose shares are traded on a national exchange; and

6 (2) whose total assets at the end of the corporation's most
7 recent fiscal quarter exceeded \$200 million.

8 Sec. 111.007. ENFORCEMENT. (a) Any health care provider or
9 entity that presents or causes to be presented a bill or a claim
10 for service for a service for which payment may not be made
11 under Section 111.005(b) shall be subject to a civil penalty of
12 not more than \$15,000 for each such service to be imposed and
13 collected by the licensing authority that regulates the health
14 care provider or entity against whom the civil penalty is being
15 imposed. All penalties collected hereunder shall be maintained
16 in a segregated account by the licensing authority to be used in
17 the enforcement of the provisions of this chapter. If there is
18 no licensing authority that regulates the health care provider
19 or entity against whom the civil penalty described herein should
20 be imposed, the penalties collected hereunder shall be
21 maintained in a segregated account by the Office of the Attorney
22 General to be used in the enforcement of the provisions of this
23 chapter and other statutes for protection of health care
24 consumers.

1 (b) Any health care provider or entity that enters into an
2 agreement or scheme, such as a cross-referral arrangement, which
3 the health care provider or entity knows or should know has a
4 material purpose of assuring referrals by the health care
5 provider to a particular entity which, if the health care
6 provider directly made referrals to such entity, would be in
7 violation of this chapter, shall be subject to a civil penalty
8 of not more than \$100,000 for each such circumvention
9 arrangement or scheme to be imposed and collected by the
10 licensing authority that regulates the health care provider or
11 entity against whom the civil penalty is being imposed. All
12 penalties collected hereunder shall be maintained in a
13 segregated account by the licensing authority to be used in the
14 enforcement of the provisions of this chapter. If there is no
15 licensing authority that regulates the health care provider or
16 entity against whom the civil penalty described herein should be
17 imposed, the penalties collected hereunder shall be maintained
18 in a segregated account by the Office of the Attorney General to
19 be used in the enforcement of the provisions of this chapter and
20 other statutes for protection of health care consumers.

21 (c) If a health care provider or entity collects any
22 amount that was billed in violation of this chapter, the health
23 care provider or entity shall refund such amount within 45 days

1 of receipt of payment to the payor, third party payor or
2 patient, whichever is applicable.

3 (d) Notwithstanding the penalties or any other remedy
4 contained in this chapter, the Attorney General may maintain an
5 action for an injunction or other relief to enforce the
6 provisions of this chapter.

7 (e) An action for an injunction or other relief to enforce
8 the provisions of this chapter may be brought by the Attorney
9 General in the name of the State and against the health care
10 provider or other entity alleged to have violated a provision of
11 this chapter to restrain such a violation by temporary
12 restraining order, temporary injunction, or permanent
13 injunction.

14 (f) An action brought under this section may be commenced
15 in the district court of the county in which the health care
16 provider or entity against whom it is brought resides, has its
17 principal place of business or has done business, or in the
18 district court of the county where the transaction occurred, or,
19 on the consent of the parties, in a district court of Travis
20 County. The court may issue temporary orders and temporary or
21 permanent injunctions to restrain and prevent violations of this
22 chapter and such injunctive relief shall be issued without bond.

23 (g) In addition to the request for a temporary restraining
24 order or permanent injunction in a proceeding brought under this

1 section, the Attorney General may request, and the trier of fact
2 may award, the civil penalties to be paid to the State as
3 contained in this section or as otherwise contained in this
4 chapter.

5 (h) The court may make such additional orders or judgments
6 as are necessary to compensate a payor, third party payor or
7 patient as contained in this section.

8 (i) Any person who violates the terms of an injunction
9 under this section shall forfeit and pay to the State a civil
10 penalty of not more than \$10,000 per violation, not to exceed a
11 total of \$50,000. For the purposes of this section, the
12 district court issuing the injunction shall retain jurisdiction
13 and the cause shall be continued and in these cases the Attorney
14 General, acting in the name of the State, may petition for
15 recovery of civil penalties under this section. All penalties
16 collected hereunder shall be maintained in a segregated account
17 by the licensing authority that regulates the person against
18 whom the civil penalty is being imposed to be used in the
19 enforcement of the provisions of this chapter. If there is no
20 licensing authority that regulates the health care provider or
21 entity against whom the civil penalty described herein should be
22 imposed, the penalties collected hereunder shall be maintained
23 in a segregated account by the Office of the Attorney General to

1 be used in the enforcement of the provisions of this chapter and
2 other statutes for protection of health care consumers.

3 (j) In bringing an action under this section, the Attorney
4 General acts in the name of the State and does not establish an
5 attorney-client relationship with another person, including a
6 third party payor or patient.

7 (k) A payor, third party payor or another health care
8 provider may maintain an action against a health care provider
9 or other entity that violates a provision of this chapter.

10 (l) In a suit filed under this section, a payor or third
11 party payor may obtain:

12 (1) The amount of money paid by the payor or third
13 party payor to the health care provider for a service furnished
14 pursuant to a referral prohibited by this chapter. If the trier
15 of fact finds that the conduct of the defendant was committed
16 knowingly, the payor or third party payor may also recover an
17 award of not more than three times the amount of the payment;

18 (2) An order enjoining a violation of this chapter;

19 (3) All orders necessary to restore to the payor or
20 third party payor all sums of money which were acquired by the
21 health care provider in violation of this chapter; and

22 (4) Any other relief which the court deems proper.

23 (m) In a suit filed under this section a health care
24 provider may obtain:

1 (1) An order enjoining a violation of this chapter;
2 and

3 (2) Any other relief which the court deems proper.

4 (n) Each payor, third party payor or health care provider
5 filing an action under this section and who prevails in that
6 action under this section shall be awarded court costs and
7 reasonable and necessary attorney's fees.

8 (o) The court, on a showing of good cause, may allow the
9 Attorney General, as a representative of the public, to
10 intervene in the action to which this section applies. The
11 Attorney General shall file its motion for intervention with the
12 court before which the action is pending and serve a copy of the
13 motion on each party to the action.

14 Sec. 111.008. . LIMITATION ON FILING SUIT. (a) An action
15 under Section 111.007 must be brought within four years after
16 the date on which a violation of a provision of this chapter has
17 occurred.

18 (b) Not later than the 61st day before the date a payor,
19 third party payor or health care provider files an action under
20 Section 111.007, the payor, third party payor or health care
21 provider shall give the health care provider written notice of
22 its intention to maintain the action, stating in reasonable
23 detail the nature of the alleged violation.

1 (c) A health care provider who receives a notice under
2 this section may correct the violation as provided by Section
3 111.009 during the period beginning on the date the notice is
4 received and ending on the 60th day after that date. A health
5 care provider who corrects a violation as provided in Section
6 111.009 is not liable to a payor or third party payor for the
7 violation.

8 Sec. 111.009. EXCEPTION FROM LIABILITY. A health care
9 provider is not liable to a payor or third party payor for a
10 violation of this chapter if, prior to or during the 60-day
11 period of time following its receipt of the notice described in
12 Section 111.008, the health care provider pays to all payors and
13 third party payors the amount of money paid by all payors and
14 third party payors to the health care provider for a service
15 furnished pursuant to a referral prohibited by this chapter.

16 Sec. 111.010. DISCIPLINARY ACTION. A violation of this
17 chapter by a health care provider shall constitute grounds for
18 disciplinary action to be taken by the licensing authority that
19 regulates the health care provider pursuant to Occupations Code,
20 Title 3, Subtitles B and C.

21 SECTION 2. EFFECTIVE DATE. (a) This Act takes effect on
22 September 1, 2005.

23 (b) This Act applies to patient referrals for designated
24 health services that are provided on or after September 1, 2006.

79TH LEGISLATURE

COAUTHOR AUTHORIZATION

(please request your coauthors to sign this form in lieu of the front or the back of the original bill)

Bill or Resolution Number: HB3317

signature of primary author

printed name of primary author

Date

PERMISSION TO SIGN HB 3317 HAS BEEN GIVEN TO (check only one of the following):

(bill or resolution #)

☒ ALL REPRESENTATIVES

☐ THE FOLLOWING REPRESENTATIVE(S):

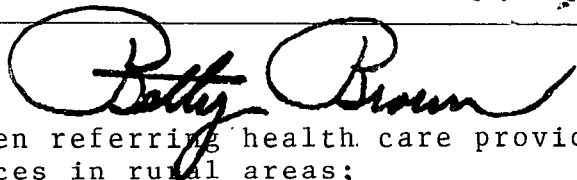
I authorize the Chief Clerk to include my name as a coauthor of the legislation indicated above:

A2100 Allen, Alma	Date	A2435 Coleman	Date	A2800 Escobar	Date
A2115 Allen, Ray	Date	A2450 Cook, Byron	Date	A2795 Farabee	Date
A2125 Alonzo	Date	A2565 Cook, Robert "Robby"	Date	A2810 Farrar	Date
A2150 Anchia	Date	A2595 Corte	Date	A2840 Flores	Date
A2155 Anderson	Date	A2605 Crabb	Date	A2850 Flynn	Date
A2160 Bailey	Date	A2610 Craddick	Date	A2860 Frost	Date
A2170 Baxter	Date	A2640 Crownover	Date	A2920 Gallego	Date
A2205 Berman	Date	A2620 Davis, John	Date	A2960 Gattis	Date
A2220 Blake	Date	A2625 Davis, Yvonne	Date	A2945 Geren	Date
A2230 Bohac	Date	A2635 Dawson	Date	A2935 Giddings	Date
A2250 Bonnen	Date	A2680 Delisi	Date	A2910 Gonzales	Date
A2280 Branch	Date	A3385 Denny	Date	A4660 Gonzalez Toureilles	Date
A2265 Brown, Betty	Date	A2690 Deshotel	Date	A2985 Goodman	Date
A2270 Brown, Fred	Date	A2705 Driver	Date	A2990 Goolsby	Date
A2255 Burnam	Date	A2665 Dukes	Date	A3010 Griggs	Date
A2295 Callegari	Date	A2660 Dunnam	Date	A3020 Grusendorf	Date
A2290 Campbell	Date	A2650 Dutton	Date	A3045 Guillen	Date
A2490 Casteel	Date	A2770 Edwards	Date	A3035 Haggerty	Date
A2495 Castro	Date	A2775 Eiland	Date	A3050 Hamilton	Date
A2585 Chavez	Date	A2780 Eissler	Date	A2695 Hamric	Date
A2480 Chisum	Date	A2785 Elkins	Date	A3160 Hardcastle	Date

A3165 Harper-Brown	Date	A3540 Laubenberg	Date	A4230 Quintanilla	Date
A3170 Hartnett	Date	A3560 Leibowitz	Date	A4215 Raymond	Date
A3190 Hegar	Date	A3620 Luna	Date	A4236 Reyna	Date
A3140 Herrero	Date	A3715 Madden	Date	A4220 Riddle	Date
A3250 Hilderbran	Date	A3780 Martinez	Date	A4250 Ritter	Date
A3275 Hill	Date	A2835 Martinez Fischer	Date	A4270 Rodriguez	Date
A3305 Hochberg	Date	A3665 McCall	Date	A4350 Rose	Date
A3290 Hodge	Date	A3650 McClendon	Date	A4420 Seaman	Date
A3325 Homer	Date	A3845 McReynolds	Date	A4525 Smith, Todd	Date
A3320 Hope	Date	A3830 Menendez	Date	A4540 Smith, Wayne	Date
A3330 Hopson	Date	A3840 Merritt	Date	A4530 Smithee	Date
A3315 Howard	Date	A3835 Miller	Date	A4550 Solis	Date
A3340 Hughes	Date	A3855 Moreno, Joe	Date	A4505 Solomons	Date
A3355 Hunter	Date	A3860 Moreno, Paul	Date	A4545 Strama	Date
A3360 Hupp	Date	A3870 Morrison	Date	A4570 Swinford	Date
A3375 Isett	Date	A3865 Mowery	Date	A4585 Talton	Date
A3350 Jackson	Date	A3885 Naishtat	Date	A4600 Taylor	Date
A3405 Jones, Delwin	Date	A3895 Nixon	Date	A4630 Thompson	Date
District 121	Date	A3900 Noriega	Date	A4650 Truitt	Date
A3400 Jones, Jesse	Date	A3880 Oliveira	Date	A4685 Turner	Date
A3475 Keel	Date	A3886 Olivo	Date	A4695 Uresti	Date
A3410 Keffer, Bill	Date	A3930 Orr	Date	A4700 Van Arsdale	Date
A3480 Keffer, Jim	Date	A3945 Otto	Date	A4725 Veasey	Date
A3470 King, Phil	Date	A4100 Paxton	Date	A4800 Villarreal	Date
A3465 King, Tracy	Date	A4140 Pena	Date	A4900 Vo	Date
A3495 Kolkhorst	Date	A4160 Phillips	Date	A4995 West	Date
A3485 Krusee	Date	A4180 Pickett	Date	A4985 Wong	Date
A3450 Kuempel	Date	A4185 Pitts	Date	A5005 Woolley	Date
A3510 Laney	Date	A4200 Puente	Date	A5150 Zedler	Date

A BILL TO BE ENTITLED
AN ACT

By



relating to financial arrangements between referring health care providers
and providers of designated health services in rural areas;
providing penalties.

MAR 11 2005

Filed with the Chief Clerk

MAR 22 2005Read first time and referred to Committee on **Public Health**Reported _____ favorably (as amended)
(as substituted)Sent to Committee on (Calendars)
(Local & Consent Calendars)Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)
by a vote of _____ yeas, _____ nays, _____ present, not votingRead third time (amended); finally passed (failed to pass) by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Engrossed

Sent to Senate

CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

Received from the House

Read and referred to Committee on _____

Reported favorably _____

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

Ordered not printed

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)
(_____ yeas, _____ nays)Read second time, _____, and passed to third reading by (unanimous consent)
(a viva voce vote)
(_____ yeas, _____ nays)

Senate and Constitutional 3 Day Rules suspended by a vote of _____ yeas, _____ nays

Read third time, _____, and passed by a (viva voce vote)
(_____ yeas, _____ nays)

Returned to the House

SECRETARY OF THE SENATE

OTHER SENATE ACTION:

_____ Returned from the Senate (as substituted)
(with amendments)

_____ House concurred in Senate amendments by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ House refused to concur in Senate amendments and requested the appointment of a conference committee
by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ House conferees appointed: _____, Chair; _____,
_____, _____, _____

_____ Senate granted House request. Senate conferees appointed: _____, Chair;
_____, _____, _____

_____ Conference committee report adopted (rejected) by the House by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

_____ Conference committee report adopted (rejected) by the Senate by a (viva voce vote)
(record vote of _____ yeas, _____ nays)